

## Remarks

### **The amendments to the claims**

Examiner will immediately see that the amendments are fully supported by the Specification as filed.

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### **The rejection of claims 187, 191, and 192 under 35 U.S.C. 112, second paragraph**

Applicant believes that the use of “observe” instead of “perceive” will satisfy both Applicants’ desire for a term that is not limited to the visual, as view is and Examiner’s desire for a term that is less ambiguous in the context than perceive.

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### **The rejection of claims 187-191 and 198-206 under 35 U.S.C. 103**

#### *The amendment of claims 187 and 198*

In the arguments made by Applicant thus far with regard to the Board and Zimmerman references, Applicant has pointed out that “Zimmerman does not set forth or imply that an Open Plan ‘activity’, ‘code’, or ‘resource’ that belongs to hierarchy can simultaneously belong to another hierarchy, which is what the cited limitation in Applicant’s claim requires”. In considering the language of claims 187 and 198 prior to writing the present response, it became apparent to Applicant’s attorney that the present form of the language setting forth the limitation in the claim did not express the limitation as set forth in the argument as well as it might, and Applicant’s attorney has consequently amended the limitation to read:

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~~the representations of model entities~~ a given representation of a model entity belonging to hierarchies including a hierarchy and/or another hierarchy

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The effect of the amendment is to ensure that claims 187 and 198 clearly set forth the understanding of the claims that has underlain the examination since Applicant’s response to the first Office action in the application. The amendment thus does not alter the scope of the claims as understood by Applicant and Examiner in the course of this examination and the claims as amended therefore should not require consideration beyond what would have been required for the unamended claims.

*Traversal of the rejection under 35 U.S.C. 103*

Examiner's rejection of claims 187-191 and 198-206 is based on Examiner's belief that the Board and Zimmerman references together disclose the limitation (as amended), "a given representation of a model entity belonging to hierarchies including a hierarchy and/or another hierarchy". Examiner grounds his rejection as follows:

Board et al teach Open Plan's flexible coding structure breaks down project cost by either a work breakdown structure (WBS) or organizational breakdown structure (OBS) (p. 62, col. 2) Board et al is reviewing Open Plan Version 400. Zimmerman however is evaluating the 5.0 upgrades and teaches codes to be 'work breakdown structures and organizational breakdown structures' (Para 4). In full context, Zimmerman teaches that Open Plan now supports hierarchical structures for activities, codes (work breakdown structures and organizational breakdown structures) and resources.

What the rejection requires to meet the limitation is that Board teach that Open Plan 4.0 permitted users not only to choose between the WBS and the OBS in arranging costs, but also permitted the users to use both schemes to arrange the same set of costs at the same time. What Zimmerman then adds to the disclosure of Board is the hierarchical structures for representing the WBS and OBS.

The relevant language at p. 62, col. 2 from Board reads as follows:

Open Plan's flexible coding structure breaks down project costs by either a work breakdown structure (WBS) or organizational breakdown structure (OBS).

The cited language is unclear. It certainly does not require that Open Plan users be able to set up both a WBS and an OBS simultaneously and that a project cost simultaneously belong to both structures, but it also does not clearly preclude such an arrangement. In order to find out what the reality behind the language was, Applicant has contacted Mike Heck, the author of the Board reference, and has asked him for a declaration under 37 C.F.R. 132 concerning what he found when he tested Open Plan 4.0 for the Board reference. Mr. Heck's declaration is attached. The declaration is clearly necessary for the proper understanding of the Board reference and was not submitted earlier because the meaning of that language only became an issue in the Office action of 7/19/03.

The Declaration makes it clear at ¶6 that Open Plan 4.0 did not permit users to set up both a WBS and an OBS simultaneously and use both schemes to simultaneously organize the costs. Since that is the case, the combination of Board and Zimmerman does not disclose the limitation of claims 187 and 198,

a given representation of a model entity belonging to hierarchies including a hierarchy and/or another hierarchy

and the rejection of those claims under 35 U.S.C. 103 is without foundation. Further, because independent claims 187 and 198 are patentable over the references, so are all of the claims dependent therefrom.

It probably should be noted here that when Mr. Heck's declaration is combined with the Zimmerman reference, it strongly implies that a cost also could not simultaneously belong to the hierarchical WBS and OBS structures which were introduced in Open Plan 5.0. It is clear from the declaration that a cost could not simultaneously belong to the non-hierarchical WBS and OBS structures of Open Plan 4.0. An arrangement permitting a cost to simultaneously belong to the hierarchical WBS and OBS structures of Open Plan 5.0 would have been a major innovation in Open Plan 5.0, and one would have expected the Zimmerman reference, which is devoted to the innovations in Open Plan 5.0, to mention it. The Zimmerman reference does not mention it, and the only reasonable implication to draw from that fact is that in Open Plan 5.0 as well, a cost could not simultaneously belong to hierarchical WBS and OBS structures.

## **Conclusion**

Applicant has amended claims 187, 191, and 192 to overcome the rejection under 35 U.S.C. 112, second paragraph, and has amended claims 187 and 198 so that the limitation set forth in the claims better conforms to the limitation as set forth in the patentability arguments. The amendments are fully supported by the Specification as filed, none of them affect the scope of the claims, and all of them put the claims in better condition for appeal, as permitted by 37 C.F.R. 1.116(b)(3). Applicant has further demonstrated by means of Mr. Heck's declaration under 37 C.F.R. 1.132 that the Board reference does not

disclose what Examiner believed it to disclose, and that the rejection of claims 187-191 and 198-206 under 35 U.S.C. 103 is without foundation. The fact that claims 187 and 198 are patentable further remedies the objections to claims 192-197 and 207-210. Applicant has thus been fully responsive to the final Office action of 7/19/2005 and respectfully requests that Examiner allow the claims as presently amended. No fees are believed to be required by way of the amendment. If any should be, please charge them to deposit account number 501315.

Respectfully submitted,

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